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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 776

THE NATIONAL COMMITTEE OF GIBRAN, also known as THE COMITE NATIONAL DE GIBRAN, representing THE TOWN OF BECHARRE, LEBANON, *Petitioner*,

v.

GEORGE G. SHIYA, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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MOTION OF THE REPUBLIC OF LEBANON FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

The Republic of Lebanon moves this honorable Court for leave to file the attached brief as *amicus curiae* in support of the petition for a writ of certiorari filed in the above action.

Counsel for the petitioner has consented to the filing of this brief, but counsel for the respondent has refused consent. Accordingly, this motion is brought pursuant to Rule 42 of the Court's Revised Rules.

Lebanon's substantial interest in this case, and reasons for its support of petitioner's position herein, are set forth in the attached brief.

Respectfully submitted,

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BRIEF OF THE REPUBLIC OF LEBANON IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

INTRODUCTION

This case is of considerable importance to the Government of Lebanon, and accordingly the Government wishes to support fully the petition for a writ of certiorari filed by the National Committee of Gibran. As we indicate in more detail below, the Committee is a

public administrative board operating under the supervision of the Government and is responsible for administering the bequest of Kahlil Gibran for the benefit of Becharre, a political subdivision of the Government. The purposes that are served by the Gibran Trust are important public purposes which will be adversely affected if the lower Court's decision is not reversed.

THE NATURE OF THE INTEREST OF THE REPUBLIC OF LEBANON

The Government's interest in this case is rooted in three considerations: the institutional relationship of the petitioner to the Government; the charitable public purposes for which the Committee expends the copyright royalties arising from the Gibran bequest; and the fact that, because of the unique status enjoyed by Kahlil Gibran in Lebanon, litigation involving a major share in the copyrights to his works commands the special attention of the people and the Government of Lebanon.

1. Institutional Relationship of the Petitioner to the Government.

The town of Becharre is a political subdivision of the central Government of Lebanon. Unlike a federal system of government wherein state and municipal governments enjoy a relatively high degree of autonomy, the Lebanese system is highly centralized. Lebanon is divided into five regions for administrative purposes. One of them is Northern Lebanon where Becharre is situated. Those regions are further subdivided into various districts and municipalities such as Becharre, and all are under the direct jurisdiction of the central Government, a jurisdiction exercised through the Ministry of Interior.

Thus, the Gibran Trust, although limited to public charitable purposes for the benefit of Becharre, is under the jurisdiction of the Ministry of Interior. In 1935, the Ministry authorized the establishment of the National Committee of Gibran to carry out the terms of Gibran's bequest. The Committee, as a public board of trustees, represents Becharre and administers the Gibran Trust for the benefit of its inhabitants, but always remains under the supervision and control of the central Government. The Committee's status as a "political subdivision of a foreign government [Lebanon]" was recognized in 1936 by the Internal Revenue Service of the United States when it granted tax exempt status to the Committee. (App. p. 74a).[1]

Upon expiration of the term of office of the previous Committee over which Joseph G. Rahme presided, and pursuant to a recent Decree issued by the Council of Ministers and signed by the President of the Republic, a Provisional Committee has been named to revise the Committee's Constitution. The Chairman of this Committee is the Minister of Interior, and its members include the Governor of Northern Lebanon and the President of the Municipality of Becharre.

2. Charitable Projects Administered by the Committee.

The 1931 Gibran bequest has provided enormous benefits to the town of Becharre. Although by United States' standards, the amounts involved may not seem great, by Lebanese standards, and more particularly the town of Becharre, the royalties are substantial indeed.

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[1] Citation is to the Appendix filed by petitioner in the Court of Appeals. Citations to the record appear as "R".

The population of Becharre is now approximately 3,500. The town, which is situated high in the mountains of Northern Lebanon, is an agricultural community in which there is little opportunity for employment. The per capita income in Lebanon is approximately $400.00 per year. While that is low enough, the per capita income in Becharre is only half that of the national average and ranges from $175.00 to $200.00 per year.[2] The Gibran royalties of $170,373.20 during 1966, if pro rated among residents of Becharre, represent a per capita income of approximately $50.00 or 25% of the total per capita income (App. p. 76a). Accordingly, the amount here in litigation—25% of the royalties—amounted in 1966 to 6¼% of the *total income* of Becharre.

The public purposes to which the royalties have been placed are of great importance to the community. A substantial portion of the royalties have been allocated to fund a medical clinic for needy residents of the town. This medical clinic represents the sole source of medical aid available to those residents who cannot afford to travel to larger coastal cities such as Beirut or Tripoli for treatment. The clinic also administers innoculations and operates a program of preventive care of substantial benefit to the community.

The churches of Becharre have played an important role in administering welfare programs for the benefit of needy families. A substantial part of the cost of such projects has been shared by the Committee either by contributions to the churches or by direct aid. Thus food, clothing and other essentials have been made

[2] Figures are estimates provided by the Economic Counselor, Embassy of Lebanon, Washington, D. C., based upon Government statistics.

available to a number of poorer residents of the town as a direct result of the Gibran royalties.

The project having the greatest long-range significance, however, is the scholarship program funded by the Gibran royalties. A substantial number of scholarships have been awarded to qualified and needy students enabling them to pursue their studies at the university level in Beirut. Funds have also been made available to permit other students to obtain vocational training at various centers located in Lebanon. The benefits derived from such a program within a "developing nation" such as Lebanon are very significant. The opportunity to obtain a university education or specialized vocational training made available to Becharre students has made it possible for them to ultimately obtain positions based upon their native ability rather than their economic status. The very existence of the program has provided encouragement to all students to pursue their studies more vigorously so that they might qualify for aid. The cost of university education or vocational training in Lebanon is, of course, much less than in the United States. Consequently, a budget of fifty thousand dollars per year for a scholarship program can benefit as many as one hundred students.

A museum in which the art of Kahlil Gibran is displayed is also funded by the royalty income. This museum has become a significant tourist attraction, and cultural programs organized under its auspices have greatly enriched all of Lebanon as well as the local community.

The great importance of the Gibran royalties was graphically, and tragically, demonstrated when re-

spondent initiated legal proceedings in the trial Court. Respondent, prior to the time petitioner obtained legal counsel, sought and obtained an injunction restraining the publisher from sending *all* royalty income to Lebanon pending final determination of the case. As a result of the injunction, the Committee was forced to abandon most of the above described projects and sharply curtail others.

3. National Importance of the Gibran Trust

The foregoing statement indicates the measurable interest of the Government in this litigation. We hope that interest is a sufficient basis for the motion to file a brief as *amicus curiae*. The Government cannot, however, fully discharge its representative responsibilities without noting another source of its interest in the case—a source that is, to be sure, intangible, but that is nonetheless of genuine significance to the people of Lebanon. Kahlil Gibran has become an important figure in Lebanese tradition. His literary accomplishments in Lebanon and the United States are, of course, a source of immense pride to the people of Lebanon. But more significantly, his qualities as a philosopher and humanist have inspired the love and admiration of his former countrymen.

Accordingly, the Government of Lebanon is intensely interested in retaining, to the extent consistent with the law of the United States, full ownership of the corpus of Gibran's Trust so that it remains exclusively public in character as intended by the author. The lower Court's decision is so greatly at odds with that interest, and with prevailing legal authorities in the United States as pointed out by Petitioner, that the Government appeals to this Court to grant review so

that the decision may be subjected to scrutiny at the highest judicial level.

ARGUMENT

The Government adopts the reasons advanced by the petitioner for the grant of certiorari. While the Government believes that those reasons are both primary and compelling, it respectfully suggests other considerations that are relevant and that pertain particularly to the Government's interest.

A. Contracts Affecting the Public Interest When Capable of More Than One Construction Should Be Construed Liberally in Favor of the Public.

The lower Courts apparently overlooked the public interest factors involved in the contract and issues raised thereunder. The public nature of the trust administered by the Committee was fully established in the lower courts. Yet the Court of Appeals, after concluding that both the contract and "surrounding circumstances" were ambiguous, proceeded to resolve those ambiguities in favor of the private interests of respondent and against the public interests of petitioner.

Substantial authority exists in support of a rule of construction that where the language of a contract is "*fairly susceptible of more than one interpretation, agreements affecting the public and agreements with a governmental body on behalf of the public are construed in favor of the public.*"[3] The Restatement of

[3] 17 Am. Jur. 2d § 288, at p. 703. See e.g., *Joy* v. *St. Louis*, 138 U.S. 1; *Larson* v. *South Dakota*, 278 U.S. 429, citing, *Charles River Bridge* v. *Warren Bridge*, 11 Pet. 420, (holding public grants are to be strictly construed and nothing passes by implication).

Contracts (1932 Ed.) § 236(f) states that *"where a public interest is affected, an interpretation is preferred which favors the public."* See also Williston, Contracts (3rd Ed. 1961) § 626, p. 842. *"Grants of franchises and contracts or agreements affecting the public interest are to be construed liberally in favor of the public."*

Perhap the best statement of the principle is set forth in Corbin, Contracts (1960 Ed.) Ch. 24 § 550, pp. 194-196:

> *"It is very commonly stated, in the guise of a rule of interpretation that public contracts and other contracts by which the public interest is affected shall be 'construed' in the manner most favorable to the public . . . Perhaps this rule is most often stated and applied to public franchises and agreements for tax exemption, but it is not restricted to them. It seems more accurate, however, to describe this rule as a rule of construction rather than one of interpretation, one that for reasons of public policy requires the court to give to a contract that legal operation that is of public advantage, when a choice between that and a less advantageous operation is reasonably open. The choice is between legal effects rather than between alternative meanings that one or both of the parties gave to their words . . ."*

In *Irwin et al.* v. *Swinney et al.*, 45 F. 2d 890 (WD Mo., 1930), the court applied principles that are relevant here. As in the case at bar, *Irwin* involved an action by attorneys to recover fees for services performed in defeating a challenge to a public charitable trust established for the benefit of a municipality—Kansas City, Missouri. The Court observed that the

judiciary should be *"ever zealous to protect from any but clearly just demands, all trusts which for the time may be in its control, and especially trusts like this, which are designed for the general promotion of human welfare."* Moreover, in fixing attorneys' fees, the Court pointed out that *"[p]ublic service generally receives and should receive a smaller measure of pecuniary compensation than that which is rendered to private persons."*

B. The Court of Appeals Decision Overlooks Respondent's Breach of Duty to Petitioner.

In arriving at its decision, the majority of the Court below imputed an intent on the part of the petitioner to, in effect, assign a 25% interest in the corpus of the Gibran Trust to respondent. We think that decision plainly wrong for the reasons stated by petitioner and by the dissenting judge. We should like merely to underscore two relevant considerations.

First, the members of the Committee are charged with an enormous public responsibility, and it is incredible that they would have assigned such a valuable interest to respondent with the entire lack of precision reflected by the contract and correspondence—both of which the Court below found ambiguous.

Second, respondent was dealing, as he well knew, with clients who were not familiar with the English language or with the substantive and procedural law of the United States. Accordingly, respondent's duty to "make plain the terms of his compensation" as Judge Hays pointed out should have been especially clear and stringently applied.

C. Relevancy of Interest of Amicus Curiae.

Although under factual circumstances quite different from the instant case, this Court has on previous occasion indicated willingness to grant certiorari where a state expresses interest in a controversy. Thus, in *State of New York* v. *United States*, 326 U.S. 572 this Court stated that "*[t]he strong urging of New York for further clarification of the amenability of states to the taxing power of the United States led us to grant certiorari.*" And in *Group No. 1 Oil Corporation* v. *Bass*, 283 U.S. 279, the Court, after first denying certiorari, reversed itself after the State of Texas joined in support of an application for rehearing.

In light of the Court's views regarding a state's expression of interest in a case as a factor influencing its decision to grant certiorari, Lebanon would urge the Court to adopt a similar view with respect to cases in which a foreign nation has expressed interest due to the similarity of the policy considerations involved.

CONCLUSION

The Government is aware that, under the principles governing review by this Court, it is not sufficient that the lower Court's decision constitutes a miscarriage of justice—as the Government believes that it did. But the Government is hopeful that the grounds advanced by the petitioner, as supplemented in this *Amicus* Brief, will meet this Court's standards, and that accordingly, review of this case, so important to the people of Lebanon, will be granted by the highest tribunal of this land. Those grounds are, we respectfully suggest, most substantial. The issues in this case involve the most fundamental principles applicable to the attorney-client relationship and to the attorney's

duties and responsibilities in dealing with matters of public interest, both domestic and foreign. In view of this Court's important role in supervising attorneys in the conduct of litigation in federal courts, we submit that these issues fully deserve the attention of this Court, and accordingly, we urge that the petition for a writ of certiorari be granted.

Respectfully submitted,

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